

Video Depo: Sergeant J. W. Robinson
Civil Action No. 2:20-cv-00561
Thursday, June 3, 2021

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IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

WILLIAM ALLEN MEANS,

Plaintiff,

v. Civil Action No. 2:20-cv-00561

E.M. PETERSON, D. HARVEY, and
THE CITY OF SOUTH CHARLESTON,

Defendants.

VIDEO DEPOSITION OF SERGEANT J. W. ROBINSON

THURSDAY, JUNE 3, 2021
1:24 P.M. - 2:27 P.M.

CALWELL LUCE diTRAPANO, PLLC
500 RANDOLPH STREET
CHARLESTON, WEST VIRGINIA

Wendy M. Thomas
Certified Court Reporter

399 Blue Lick Road
Winfield, WV 25213
304-541-0636
wvnoah@yahoo.com

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304-541-0636

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A P P E A R A N C E S

On Behalf of the Plaintiff:

L. Dante DiTrapano, Esquire
 Calwell, Luce, DiTrapano, PLLC
 500 Randolph Street
 Charleston, West Virginia 25302
 dcarriger@cldlaw.com
 crussell@cldlaw.com
 jharwell@cldlaw.com

On Behalf of the Defendants:

Duane J. Ruggier, II, Esquire
 Pullin, Fowler, Flanagan, Brown & Poe, PLLC
 James Mark Building
 901 Quarrier Street
 Charleston, West Virginia 25301
 druggier@pffwv.com
 lburke@pffwv.com

Also Present:

Jim Damron, Legal Video Specialist

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T A B L E O F C O N T E N T S

WITNESS EXAMINATION

Sergeant J. W. Robinson	Mr. DiTrapano	Pg 4, 50
	Mr. Ruggier	Pg 31, 52

EXHIBITS MARKED FOR IDENTIFICATION

EXHIBIT	MARKED
No. 1 - Accident Report	Pg 14
No. 2 - Thumb Drive	Pg 26
No. 3 - Photograph	Pg 54
No. 4 - Photograph	Pg 54

READ & SIGN SHEET / ERRATA SHEET	W A I V E D
REPORTER'S CERTIFICATE	Pg 55, 56

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P R O C E E D I N G S

1 VIDEOPHAGER: This is the video deposition of
 2 Sergeant J. W. Robinson being taken by the Plaintiff, Civil
 3 Action 2:20-cv-00561, caption, Means v. Peterson, Harvey, and
 4 City of South Charleston, US District Court for the Southern
 5 District of West Virginia at Charleston.

7 We're beginning at 1324 on Thursday, the third day
 8 of June 2020 at the law firm of Calwell, Luce, diTrapano in
 9 Charleston, West Virginia. The court reporter is Wendy
 10 Thomas. I am the videographer, Jim Damron. Will counsel
 11 please state their appearances then our court reporter will
 12 please swear in the witness.

13 Mr. DiTRAPANO: My name is Dante DiTrapano, and I
 14 represent William Means.

15 MR. RUGGIER: Duane Ruggier on behalf of Peterson
 16 and Harvey.

17 (WITNESS SWORN.)

18 (WHEREUPON,

19 SERGEANT J. W. ROBINSON

20 WAS CALLED AS A WITNESS, DULY SWORN, AND
 21 TESTIFIED AS FOLLOWS:)

22 EXAMINATION

23 BY MR. DITRAPANO:

24 Q. So I just learned that it is Sergeant Robinson now.

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1 A. Yes, sir.

2 Q. Okay. Congratulations for the -- the promotion
 3 and --

4 A. Thank you.

5 Q. I just wanted to ask you a few questions today as
 6 it relates to a call that you made -- that you came upon some
 7 time back in May of 2020. And I wanted to ask you, have you
 8 ever had your deposition taken before?

9 A. Yes, sir, I have.

10 Q. All right. So I'm not going to go through a bunch
 11 of the typical instructions because you understand that one
 12 of the most -- one of the things is, is that, you know,
 13 you've been sworn in, so you're -- you're bound to tell the
 14 truth; is that correct?

15 A. Yes, sir, it is.

16 Q. Is it also correct that it's very important for a
 17 police officer in this job to tell the truth --

18 A. Yes, sir.

19 Q. -- in -- in all circumstances?

20 A. I believe so, sir, yes, sir.

21 Q. Whether in a deposition or in a report or -- or,
 22 you know, to the supervisors or whatever the situation is.
 23 And one of the things that comes along with the trust that we
 24 give police officers is that we can trust that they're

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1 telling the truth. Do you agree with that?

2 A. I agree.

3 Q. I want to get into a little bit about -- of your
4 background. When did you go to the police academy?

5 A. January of 2003.

6 Q. All right. And was that at the academy in Dunbar,
7 West Virginia?

8 A. Yeah, at Institute. Yes, sir.

9 Q. Yeah. How old were you when you went into the
10 academy?

11 A. Twenty-six I think, sir.

12 Q. Twenty-six. Did you go to high school around here?

13 A. I went to Man High School.

14 Q. Okay. Down in Logan?

15 A. Logan County, yes, sir.

16 Q. Yeah. Are you born and raised in Logan?

17 A. Yes, sir.

18 Q. The Buffalo Creek area?

19 A. Yes, sir.

20 Q. So you're a Man Hillbilly?

21 A. I am a Man Hillbilly --

22 Q. Yeah.

23 A. -- through and through.

24 Q. Yeah. Good -- great people down there. After high

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1 Q. And how do you do that? How does one become a West
2 Virginia State Police Officer?

3 A. Well, it's about a six-month process. It starts
4 out with an application and physical test, a knowledge test,
5 a general knowledge test, background investigation, a couple
6 different interviews and if you pass through the background
7 -- or through the process, they -- they let you in.

8 Q. So there's actually an application process,
9 correct?

10 A. Yes.

11 Q. And then once you get in, then they send you to the
12 academy?

13 A. That is correct.

14 Q. All right. Did -- when you were at the academy,
15 did you have a -- a course that dealt with pursuit of
16 vehicles?

17 A. Yeah, basically.

18 Q. All right.

19 A. It probably didn't just -- they probably just
20 didn't teach about pursuits, but it was -- it was taught,
21 yes.

22 Q. What do you remember from -- from your experience
23 there? And this isn't a test. I just want to know if you
24 recall what -- what they taught you about pursuing, you know,

Page 7

1 school what's the first thing that you did?

2 A. I worked -- worked for the sheriff's department
3 there in Logan.

4 Q. So you were a member of the Logan County Sheriff's
5 Department?

6 A. Yeah, as a -- as a process server.

7 Q. All right. How long did you work for them?

8 A. Six years.

9 Q. Was that prior to you going to the police academy?

10 A. Yes, it was. I started in 1996.

11 Q. So what kind of training did you have to have to --
12 what kind of training do you have to have to be a sheriff's
13 deputy in Logan County?

14 A. Well, I wasn't actually a deputy. I was a process
15 server, but no training, really.

16 Q. Okay. So -- so you worked for the Logan County
17 Sheriff's Department as a process server, not as a police
18 officer?

19 A. That is correct.

20 Q. All right. And then at some point you decided that
21 you wanted to do something different than serve papers for
22 the Sheriff's Department so you did what?

23 A. In 2003 I joined the State Police -- West Virginia
24 State Police.

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1 motorcycles, cars, whatever it may be.

2 A. I really don't remember exactly what they -- what
3 they taught us.

4 Q. Do you remember that, perhaps, maybe there's some
5 balancing test that -- that -- that you have to take into
6 consideration the necessity of apprehension versus the risk
7 to the public?

8 A. Absolutely.

9 Q. Does that sound like that's something that they
10 would have taught you?

11 A. Yes.

12 Q. Is that something that's in this -- the policies
13 now as a -- the West Virginia State Police policies?

14 A. Yes, it is.

15 Q. So -- so you -- when you decide whether to take on
16 to pursue somebody, there's a test that you balance whether
17 or not it's -- it's so important to apprehend this particular
18 suspect and what the risk is to the general public?

19 A. That's correct.

20 Q. Okay. And if the risk to the general public
21 outweighs the need to apprehend, then you are supposed to
22 pull back from the pursuit?

23 A. Yes, sir.

24 Q. All right. Now, on this particular day -- and I

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1 believe it was May the 2nd.

2 MR. DITRAPANO: Is that right, Duane?

3 MR. RUGGIER: I believe that's correct.

4 BY Mr. DITRAPANO:

5 Q. May the 2nd 2020, what -- what were your -- what
6 was your shift that day and what was your area that you were
7 working?

8 A. I can't really remember the shift. I'm thinking it
9 was a day shift, but I was actually in the Madison area of --
10 of Boone County.

11 Q. All right. Were you -- as part of your territory,
12 I guess, does it -- are you working in Boone County now?

13 A. No, I'm working in South Charleston now in Kanawha
14 County.

15 Q. Okay.

16 A. May the 2nd of 2020, yes, I was in Boone County.

17 Q. All right.

18 A. We cover the entire county.

19 Q. Is there a detachment in Boone County?

20 A. Yes. It is in Danville.

21 Q. Okay. So -- so you were working out of the
22 Danville detachment on May the 2nd of 2020 and you got some
23 kind of an alert that there -- that there may be a pursuit in
24 -- going on, correct?

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1 -- the wreck had occurred, you were coming down on the other
2 side of the tracks?

3 A. Yeah. I was coming the opposite direction of the
4 pursuit, yes.

5 Q. Okay. When you -- when you arrived at the scene,
6 had -- had there already been a -- an accident?

7 A. Yes.

8 Q. Okay. So -- so you were not a witness to anything
9 that happened at the -- in terms of whether Billy Means hit
10 the railroad track and wrecked or whether Peterson hit his
11 back tire and caused the accident? You -- you're not a
12 witness to either of those things?

13 A. I'm not a witness to either of those, no.

14 Q. Okay. What -- what did you see when you first
15 arrived at the scene?

16 A. As I was coming down the hill to the scene I seen a
17 couple of the South Charleston Police Department, a couple of
18 their guys. As I got down and parked my car and I got out, I
19 could see a motorcycle laying over to the left of the track
20 in a waterhole, a drain. It was not completely submerged,
21 but most of the back was underwater. And I saw a gentleman
22 laying on the other side of the track on his back.

23 Q. Okay. So -- so by the time you arrived, Billy
24 Means had already been taken across the railroad tracks to

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1 A. Yeah, from -- from Boone County 911. They
2 dispatched it as a -- as a pursuit coming from Kanawha County
3 into Boone County.

4 Q. Okay. Do you know --

5 A. Possibly -- possibly coming into Boone County.

6 Q. Okay. Do you know approximately where -- where you
7 were and what time it was when you received that notice?

8 A. Not exactly, but I -- like I said, I was in -- in
9 the Madison area because it took quite a bit of time to get
10 to where -- to the scene.

11 Q. All right. What did -- what did you do in response
12 to the 911 operator telling you that there was a possible
13 pursuit heading into Boone County?

14 A. I -- I -- I responded to that location.

15 Q. Okay. Did -- do you know -- you're in Madison, so
16 you're on the other side of Corridor G, I guess. Did you --
17 did you get out on, I guess they call it 119? Is that --

18 A. Yeah. I got out on 119, made a right-hand turn on
19 Route 3 for several miles, then made a left-hand turn on
20 Riverview Road.

21 Q. Okay.

22 A. I got to Ashford and turned left on Inlands
23 (phonetic) Road.

24 Q. Okay. And so you -- when you came into where the

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1 the other side?

2 A. That is correct.

3 Q. And were both the officers in the vicinity of Billy
4 Means at the time that you pulled your cruiser up?

5 A. I -- I can't remember exactly what location they
6 were at, but they were in the -- in the general area, yes.

7 Q. All right. Do you recall when you pulled up if one
8 of the South Charleston Police Department vehicles was
9 actually parked on top of the railroad tracks? The crossing?

10 A. I don't think it was, sir.

11 Q. What did you do when you arrived at the scene?

12 A. I talked to the officers that was there. Like I --

13 like I was telling him earlier, I don't know either of --

14 either the Peterson or Harvey. I don't personally know them,

15 so I don't know who I was speaking with. And basically asked

16 them, you know, what happened. And they told me they

17 attempted to stop the motorcycle around Southridge, pursued

18 him here, and he didn't make the turn and -- and -- and he --

19 and he crashed and he went into the -- the drain and was face

20 down in the water, so they had to remove him from the water

21 and across the track so he didn't drown at that time.

22 Q. Okay. So -- so they told you that he was face down

23 in the water?

24 A. Best of my knowledge, yes, sir.

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1 Q. And they told you that they needed to get him out
 2 of the water because they feared he might drown?

3 A. Yes.

4 Q. Did they show you where in the ditch line that he
 5 actually was?

6 A. No, sir. Just -- I mean I could see the motorcycle
 7 where it was at. They just said he was right next to it, so,
 8 I mean, I assumed he was laying in the water right beside of
 9 it.

10 Q. I noticed that -- that you -- you actually did a --
 11 an accident report; is that true?

12 A. Yes, sir.

13 Q. All right. And I don't want to ask you questions
 14 without you having a chance to look at it, so I want -- I
 15 want to mark this as Plaintiff's Exhibit 1.

16 (WHEREUPON, Exhibit No. 1 was marked for
 17 identification, and is attached hereto.)

18 MR. DITRAPANO: And I want you to give that to the
 19 witness. Do you have a copy, Duane?

20 MR. RUGGIER: I think I do.

21 MR. DITRAPANO: All right.

22 BY MR. DITRAPANO:

23 Q. And I want to ask you some questions about this --
 24 this accident report. Is it -- would it be just your normal

Page 16

1 being pursued by South Charleston Police Department. That
 2 information would have come directly from one of the police
 3 officers, correct?

4 A. Yes.

5 Q. Okay. Because -- because you didn't see him
 6 driving 60 miles an hour; did you?

7 A. I did not, no.

8 Q. And Billy Means didn't tell you he was driving 60
 9 miles per hour; did he?

10 A. He did not.

11 Q. Okay. So -- so 60 miles per hour had to come from
 12 Peterson or Harvey; would you agree with that?

13 A. Yes.

14 Q. And then it says he refused to stop and, while
 15 fleeing, lost control while crossing the railroad tracks and
 16 crashed into an embankment. Now, that had to come from
 17 Peterson or Harvey, right?

18 A. Yeah, but, I mean, it was pretty obviously he --
 19 pretty obvious that he did crash down the railroad track.

20 Q. But -- but you don't know whether he crashed or
 21 whether Peterson hit his back tire; do you?

22 A. I don't know that, no, sir.

23 Q. Okay. So -- so, again, what you put in this report
 24 is based only on what you learned from Peterson and Harvey?

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1 protocol because you responded to a -- an accident scene that
 2 -- that you would fill out this report or were you asked by
 3 the South Charleston Police to fill out this report?

4 A. Shoot. I don't remember if they asked or not, but
 5 it is -- it's pretty normal that we work an accident, do the
 6 accident report for that.

7 Q. Okay. And -- and you never spoke directly to Billy
 8 Means when you filled out this accident report; is that
 9 correct?

10 A. I did not. When I -- I think I was just a couple
 11 minutes quicker than the EMS getting on scene.

12 Q. Yeah.

13 A. And they were tending to him and I just never got
 14 an opportunity to get to speak with him.

15 Q. Okay. So you -- everything that's in this report
 16 is based on information that you learned from Peterson and
 17 Harvey, who are the two South Charleston Police Department --

18 A. Yes, sir.

19 Q. So what -- what they told you is -- is the -- is
 20 the source of any information that's in this report?

21 A. Yes.

22 Q. Okay. So in the narrative it says -- this is on
 23 page 2. It says vehicle 1 was traveling south on West
 24 Virginia Route 3 at approximately 60 miles per hour while

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1 A. Correct.

2 Q. All right. And then it says vehicle 1 came to rest
 3 approximately 60 feet to the south from where Route 1 beside
 4 the railroad tracks and the creek. So you could learn that
 5 on your own. Did you measure that 60 feet or just eyeball
 6 it?

7 A. Just approximate.

8 Q. Okay. And -- and you just assumed that Billy was
 9 close to the motorcycle, correct?

10 A. Yes. I never seen him. He was already across the
 11 railroad tracks when -- when I got there, so.

12 Q. Okay. And that -- and that brings me to a --
 13 another question I should have asked you when we were talking
 14 about your training at the state police academy. Did you
 15 have a -- a -- a course or a section in training about how to
 16 deal with people who have been in an automobile or motorcycle
 17 accident in terms of -- of, you know, making sure that they
 18 are medically stable?

19 A. Other than the first aid, CPR, no, sir.

20 Q. Okay. So you -- so you wouldn't -- you wouldn't
 21 have had any kind of training about not moving somebody who
 22 could have had a neck or back injury?

23 A. Well, I mean that's common sense.

24 Q. Okay.

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1 A. So, yeah.

2 Q. So -- so common sense would tell you that if
 3 somebody had been in a high-speed chase on a motorcycle and
 4 they wrecked, whether it was caused by the South Charleston
 5 Police officer hitting the back tire or he just wrecked at
 6 those speeds and thrown over a railroad track and -- and laid
 7 beside the track, common sense would tell you that you don't
 8 drag that person to the other side of the track by their
 9 wrists. Would you agree with that?

10 A. Well, not really. I mean if -- if this guy is
 11 going to drown if I leave him here, I'm going -- I'm going to
 12 remove him from the water to keep him from drowning.

13 Q. Okay.

14 A. I mean I'd rather have a broke arm than drown. You
 15 see what I'm saying? So --

16 Q. Okay. But --

17 A. But I understand what you're saying, but if -- if
 18 -- if I left -- if you leave this guy alone, he's laying
 19 there on the railroad track and a train -- and a train is
 20 coming and I don't remove him, he's going to get run over by
 21 the train and he's going to die. Well, he's got a chance to
 22 live if we move him off the track.

23 Q. Was he ever on the railroad track? Do you know if
 24 -- did anybody tell you that he was on --

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1 A. I think --

2 Q. -- the railroad track?

3 A. No, they never said he was on the railroad track.
 4 That was just an -- an example, but the drug him across the
 5 track.

6 Q. Right. But I mean is there no other way that they
 7 could have -- and this is all sort of hypothetical because
 8 you weren't there, but they -- they could have dealt with --
 9 with making sure that they didn't disrupt his spinal cord and
 10 his neck by, you know, treating him more gently than dragging
 11 him by his wrists across the railroad tracks.

12 MR. RUGGIER: Object to the form of the question.
 13 You can answer.

14 THE WITNESS: Say that again.

15 MR. RUGGIER: You can -- I objected to the
 16 question.

17 THE WITNESS: Okay.

18 MR. RUGGIER: But you still have to answer.

19 THE WITNESS: I mean I wasn't there for that part
 20 of the pursuit, so, I mean, I -- I don't know. I don't know
 21 what they could have done different.

22 BY MR. DITRAPANO:

23 Q. Okay. The pursuit was over with and he -- and he
 24 -- he wrecked and he's laying, you know, in a ditch on the

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1 other side of the railroad tracks. And there's a video of --
 2 of the -- of the police officers grabbing him by his wrists
 3 and dragging him across the railroad track. And I'm just
 4 asking you if -- if you believe that that was -- is the best
 5 way that they could have handled somebody who was in a high-
 6 speed crash like that.

7 MR. RUGGIER: Same objection. You can answer.

8 THE WITNESS: I don't -- probably not, but, like I
 9 said, I was not there. I don't know. I mean I have no idea.

10 BY MR. DITRAPANO:

11 Q. Okay. Okay. You have in -- you have on page 6 of
 12 the report that the vehicle was operating in a -- operating
 13 vehicle in an erratic, reckless, or careless manner. Now,
 14 that's information that you learned from either Peterson or
 15 Harvey, correct?

16 A. Yes.

17 Q. And then the charge of failure to maintain control
 18 of the vehicle was also something you learned from them
 19 because you don't know whether he was hit by one of the South
 20 Charleston Police officers or wrecked on his own, right?

21 A. That's correct.

22 Q. Did you -- did you have any opportunity to speak
 23 with the emergency medical folks when you arrived or when
 24 they --

Page 21

1 A. No.

2 Q. -- they arrived? They arrived after you, correct?

3 A. Yeah, they -- they did arrive after I did, but no.
 4 No, sir. I didn't speak with them because they were working
 5 with -- with the victim and got him loaded up and got him to
 6 the hospital.

7 Q. Do you remember when you arrived at the scene
 8 whether or not Billy Means was on his back or face down to
 9 the ground?

10 A. He was on his back.

11 Q. Okay. Was he handcuffed?

12 A. Yes, sir, I think he was.

13 Q. Did you see the officers handcuff him?

14 A. I did not.

15 Q. So -- so when you -- when you arrived, what -- were
 16 he -- was he cuffed in front of him?

17 A. To the best of my knowledge, yes, sir, he was.

18 Q. Okay. So -- so he was -- he was facing up, so he
 19 would be looking at the sky and his hands would have been,
 20 you know, cuffed in front of him, correct?

21 A. Yes, sir.

22 Q. Was he conscious or unconscious?

23 A. He was conscious because he was talking.

24 Q. Okay. Did -- what did he say?

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1 A. Well, when I say talking, he was screaming in pain.
 2 Q. Okay. He was -- he was hurting; wasn't he?
 3 A. Yes.
 4 Q. Do you know that he's paralyzed?
 5 A. I had no idea, sir.
 6 Q. Okay. He -- he -- he had a -- he suffered a spinal
 7 cord injury and he's going to spend the rest of his life in a
 8 wheelchair.
 9 A. I didn't know that.
 10 Q. You did not know that?
 11 A. I did not know that.
 12 Q. Okay. And that -- thus, I was asking you the
 13 questions about, you know, when somebody is in an accident
 14 like that, grabbing him by his wrists and dragging him across
 15 the railroad tracks might not be the best thing to do; would
 16 you agree with that?
 17 MR. RUGGIER: Objection to the form of the
 18 question. He's not an expert in this area.
 19 MR. DITRAPANO: I'm not -- I'm just asking him. He
 20 -- he has training as a police officer, so I'm asking him a
 21 question about if somebody is in a -- in an accident, which
 22 we've got in the accident report that he was going 60 miles
 23 an hour. Got that from the South Charleston Police. And he
 24 was in an accident and -- and he -- and he wrecked and now

Page 23

1 they -- they drug him across the railroad tracks. I was just
 2 asking him, you know, did he think there was a better way to
 3 handle it. Maybe he's already answered it, but --
 4 MR. RUGGIER: Same -- I still object saying he's
 5 not an expert and he wasn't at the scene, so he doesn't know
 6 -- he doesn't know what happened, but you can ask him.

BY MR. DITRAPANO:

8 Q. Do you think they could have treated a person in
 9 that situation -- I'm talking about the two officers before
 10 the emergency medical folks got there. Do you think they
 11 could have treated him in a way that was -- that -- that was
 12 less likely to cause additional injuries?

13 MR. RUGGIER: Objection. Calls for a hypothetical.
 14 He just wasn't there.

BY MR. DITRAPANO:

16 Q. He's going to keep objecting to that. You can just
 17 answer the question, you know.

18 A. I wasn't there and I don't know exactly how they
 19 drug him, but, I mean, I'm sure, as a police officer, we can
 20 always do something different after we sit back and look at
 21 it, but at the time in the heat of the moment, I mean I -- I
 22 don't know. I can't really answer that.

23 Q. Okay. I'm getting ready to show you a video of
 24 that so you -- you'll -- you'll see and then maybe you can

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1 give me a better answer than that. And I -- and I'll ask
 2 you, also, a question before we show the video. I want you
 3 to define for me what excessive force is.

4 A. What excessive force is? More force -- use more
 5 force necessary than what it would take to -- to, I guess,
 6 subdue the subject.

7 Q. Okay. There's a -- there's a thing in the -- in
 8 the --- in the law that -- that we all had in -- in law
 9 school that dealt with a supreme court case like back in
 10 1964. And it was -- it was -- it had to do with obscene
 11 material, you know. You can't really describe obscene
 12 material, but you know it when you see it, right?

13 A. Right.

14 Q. And I've had people, you know, in your line of work
 15 say that, you know, it's really hard to define excessive
 16 force, but you know it when you see it. Would you agree with
 17 that?

18 A. That's true, yes.

19 Q. Okay. Well, I'm going to show you a video.
 20 MR. DITRAPANO: Jasmine, I want you to play the
 21 video.

22 BY MR. DITRAPANO:

23 Q. I'm going to show it about three times before I ask
 24 you any questions. I want you to watch -- watch the video.

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1 MR. DITRAPANO: I want you to show the -- the
 2 stomping video.

3 MS. HARWELL: We may need a brief break to get Josh
 4 up here.

5 MR. DITRAPANO: Okay. Can -- can we take a -- a --
 6 a couple of minutes?

7 VIDEOGRAPHER: Going off the record at 1347.

8 (Brief recess.)

9 VIDEOGRAPHER: Back on the record at 1352.

10 MR. DITRAPANO: Okay. Don't play it yet, Jasmine.

11 BY MR. DITRAPANO:

12 Q. I want to -- I want to tell you that the South
 13 Charleston Police officers do not have any body cams and they
 14 do not have any dash cams, but there was a couple of
 15 bystanders who pulled over in the car and they took a video
 16 of this on -- on their iPhone.

17 A. Okay.

18 Q. And -- and -- and we've had it enhanced to -- you
 19 know, so you can see it clearer. And so I wanted to ask you
 20 whether or not you would -- I'm going to have you watch it
 21 three times and then I'm going to ask you some questions.

22 A. Okay.

23 Q. Okay.

24 MR. DITRAPANO: Go ahead and play it.

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1 MR. RUGGIER: Is this Exhibit 2?
 2 MR. DITRAPANO: This will be Exhibit 2 to the
 3 deposition.
 4 (WHEREUPON, Exhibit No. 2 was marked for
 5 identification, and is attached hereto.)
 6 (WHEREUPON, Exhibit No. 2 was played into
 7 the video record.)
 8 MR. DITRAPANO: Okay. Play it again.
 9 (WHEREUPON, Exhibit No. 2 was played into
 10 the video record.)
 11 MR. DITRAPANO: Okay. One more time.
 12 (WHEREUPON, Exhibit No. 2 was played into
 13 the video record.)
 14 BY MR. DITRAPANO:
 15 Q. Okay. Sergeant Robinson, you -- you just watched a
 16 video, I had you watch three times of -- of one of the South
 17 Charleston Police officers, and I'm going to represent to you
 18 that's it's Harvey handling Mr. Means. I want to ask you if
 19 you would agree with me that that was excessive force.
 20 A. What was -- what was he trying to do in the video?
 21 Just handcuff him? Is that what he was doing? I couldn't
 22 really tell.
 23 Q. Do you want to watch it again?
 24 A. Yeah.

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1 Q. Let's watch it again.
 2 MR. DIRAPANO: Go ahead and play it again.
 3 (WHEREUPON, Exhibit No. 2 was played into
 4 the video record.)
 5 BY MR. DITRAPANO:
 6 Q. Okay. Would you agree with me that -- that -- that
 7 Mr. Means was not in a position where he was any threat to
 8 the officer?
 9 A. I wouldn't think so, no, sir.
 10 Q. Okay. So -- so would you agree with me that
 11 stomping on his head was excessive force?
 12 A. I probably would --
 13 MR. RUGGIER: Objection to the form of the
 14 question.
 15 THE WITNESS: I'm not 100 percent sure by that
 16 video if he -- that was the helmet he stomped on or head or
 17 whatever or kicked out of the way, but, yeah, I probably
 18 would have handled it a little different.
 19 BY MR. DITRAPANO:
 20 Q. Okay. What -- all right. Would -- would you agree
 21 with me that if -- if he, in fact, stomped on his head, which
 22 is what the video shows, that that would be excessive force?
 23 MR. RUGGIER: Object to the form of the question.
 24 The video doesn't show that. But go ahead and answer.

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1 THE WITNESS: Yes.
 2 BY MR. DITRAPANO:
 3 Q. Okay. So -- so you would agree that stomping on
 4 the head of -- of -- of a -- of a defenseless person is
 5 excessive force?
 6 A. Yeah. I mean if that's actually what happened
 7 there. If that was his head that he stomped on, yes, I would
 8 say that's excessive force.
 9 Q. Okay. Do you want to watch it again? Is there --
 10 is there --
 11 A. Well, at the end of it, I couldn't tell whether --
 12 to me, it looks like his helmet came off and that's what was
 13 kicked or whatever happened there.
 14 Q. Okay.
 15 A. I -- I -- just by the way the helmet moved, the
 16 white helmet moved, I don't think his head was in it. I
 17 think it was just the helmet.
 18 Q. Okay. If I told you --
 19 A. But that's me, personally, looking at it, so --
 20 Q. Right. If I told you that the helmet never left
 21 his head, would you agree that that -- that he was stomping
 22 on the helmet?
 23 A. Something happened, yes, sir.
 24 Q. Okay. And you -- and -- and if he was stomping on

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1 the helmet of a defenseless person in this video, Billy
 2 Means, you would agree that that's excessive force?
 3 A. Yes, sir.
 4 Q. Okay. I want to show you another part of the
 5 video. This happens, actually, before the stomping on the
 6 head. And this is -- this is when he's on the other side of
 7 the tracks after being -- after wrecking going 60 miles an
 8 hour according to the officers.
 9 (WHEREUPON, Exhibit No. 2 was played into
 10 the video record.)
 11 MR. DITRAPANO: Okay. One more time when they drag
 12 him.
 13 (WHEREUPON, Exhibit No. 2 was played into
 14 the video record.)
 15 BY MR. DITRAPANO:
 16 Q. Would you agree with me that they're dragging him
 17 across the railroad tracks?
 18 A. Would I agree with you? Yes, they are.
 19 Q. Okay. So you can see that pretty clear on the
 20 video?
 21 A. Oh, yes, sir.
 22 Q. Okay. Do you think in the video that -- in the
 23 video that -- that -- knowing that he was in a wreck on a
 24 motorcycle and, according to them, going 60 miles per hour

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Sheet 9 Page 30

1 that that was an appropriate way to handle somebody in that
2 kind of a wreck?

3 MR. RUGGIER: Objection to the form of the
4 question. You can answer.

5 THE WITNESS: Like I said, I wasn't there to see
6 that, so, I mean, I -- I can't answer that.

7 BY MR. DITRAPANO:

8 Q. Okay. But you -- you know -- you know from your
9 own training as a police officer and I know you're not an
10 expert in this case, but you're a state police officer. From
11 your own training, when somebody is involved in a high-speed
12 collision, whether it was caused by Peterson or he wrecked on
13 his own, there's a -- there's a risk of some kind of spinal
14 cord injury; isn't there?

15 A. Yeah. Yes, there is.

16 Q. Okay. So -- so wouldn't the officer, if the EMTs
17 aren't there, be the -- be the first responder?

18 A. Yes.

19 Q. Okay. And in that regard, wouldn't it be up to the
20 officer, who is the first responder, to try to take as much
21 care as possible to make sure that they don't exacerbate the
22 injury?

23 A. Yes, sir.

24 Q. Okay. Did that look like, to you, dragging them

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1 officer to move an individual if the -- if the police
2 officers believe that the individual is drowning in water and
3 beside the railroad tracks, you know, they could be struck by
4 a train?

5 A. Yes, sir. I would move him.

6 MR. DITRAPANO: Did you say on the railroad tracks?

7 MR. RUGGIER: I said beside. Beside the --

8 MR. DITRAPANO: How are you going to get struck by
9 a train beside the railroad tracks?

10 MR. RUGGIER: You'll get your chance to ask
11 questions later.

12 BY MR. RUGGIER:

13 Q. Do you recall when you were there you come up on
14 the scene and Mr. Means is already laying on the opposite
15 side of the tracks, right?

16 A. Yes. He was on the opposite side of the railroad
17 track from his motorcycle --

18 Q. All right.

19 A. -- on his back.

20 Q. Where the motorcycle was located, though, was --
21 was on the other side of the tracks, right?

22 A. That's correct.

23 Q. And it was in water?

24 A. That is correct.

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1 across the -- dragging Billy Means across the railroad tracks
2 that they were being -- they were being cautious about not
3 exacerbating any injury?

4 A. No, sir.

5 Q. Okay. And besides the -- what we've talked about
6 here today, and I really appreciate you taking the time to,
7 you know, come in and -- and give your testimony, there's
8 nothing else that you know or have learned about this case
9 that you think is important?

10 A. No, sir.

11 Q. Okay. Those are all the questions that I have.

EXAMINATION

13 BY MR. RUGGIER:

14 Q. Let's see. So I'm going to have several questions
15 for you, Officer. I'm going to bounce around a little bit.
16 Would you agree with me that it would be common sense to pull
17 an individual out of water after a motorcycle accident if
18 that individual is drowning?

19 A. Absolutely.

20 Q. Would it be common sense to pull that individual
21 out of the water if that individual asked to be pulled out of
22 the water because they were drowning?

23 A. Yes.

24 Q. Would it be common sense or reasonable for a police

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1 Q. And that water was how deep?
2 A. I would say at least a couple feet. Maybe a little
3 more. You could see in some of the pictures that the -- the
4 motorcycle was submerged --

5 Q. Motorcycle was --

6 A. -- most of the way.

7 Q. -- submerged and somebody -- an individual, if they
8 were laying in that water and would not lift up their head,
9 would be potentially drowning?

10 A. Absolutely.

11 Q. Now, you don't have any idea, do you, as to when
12 Mr. Means actually became paralyzed?

13 A. I do not.

14 Q. And you don't -- when you arrived on the scene, was
15 Mr. Means moving at all?

16 A. Not that I can remember.

17 Q. Have you ever dealt with anybody -- any situation
18 where someone has become paralyzed?

19 A. Not that I recall.

20 Q. As a police officer?

21 A. No, sir, not that I recall.

22 Q. Have you ever heard of individuals who had phantom
23 movement? In other words, they feel like they're moving, but
24 they're not?

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1 A. No, sir.
 2 Q. You prepared the accident report?
 3 A. That is correct.
 4 Q. You got a copy of it, Exhibit 1.
 5 A. Yes.
 6 Q. And we'll go through the accident report a little
 7 bit. You prepared the -- the accident report of, I guess,
 8 the state police, right?
 9 A. That's correct.
 10 Q. All right. And in the accident report on page 1
 11 you remark that the vehicle was operated -- Mr. Means
 12 operated his vehicle in an erratic, reckless, or careless
 13 manner. Do you see that?
 14 A. On page 1?
 15 Q. Yeah. The -- you got the right one? Down on the
 16 right-hand side there, halfway down through the page. You
 17 got the wrong report. I'm looking at the South Charleston
 18 Police --
 19 A. It's on page 4 I think. Three or four. No, six.
 20 Q. Let's see here. Actually, I have the South
 21 Charleston report.
 22 MR. DITRAPANO: You -- you want a copy of the state
 23 police report?
 24 MR. RUGGIER: I've actually got it here. I was

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1 A. I think one of them mentioned it was traffic --
 2 traffic violation.
 3 Q. Well, were you aware that he was in -- that he was
 4 in position -- possession of some crystal meth?
 5 MR. DITRAPANO: I'm just going to object to the
 6 form of the question. That's not why he was being pursued,
 7 Duane.
 8 BY MR. RUGGIER:
 9 Q. Were you aware that he was in possession of some
 10 crystal meth?
 11 A. No, sir.
 12 Q. Did you see any crystal meth at the scene?
 13 A. I did not.
 14 Q. Did you take any photographs of any crystal meth at
 15 the scene?
 16 A. I did not.
 17 Q. Any -- any substances of any kind at the scene?
 18 A. I did not, no.
 19 Q. Did you -- do you remember seeing a backpack that
 20 he had on?
 21 A. I did see a backpack, yes, sir.
 22 Q. Did you inspect the backpack or look in the
 23 backpack?
 24 A. I did not.

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1 just looking at the wrong one.
 2 BY MR. RUGGIER:
 3 Q. Sorry. Let's go back to -- let's go back to the
 4 report that you prepared, which is Exhibit 1, correct?
 5 A. Okay.
 6 Q. Go to page 2, the narrative. It says vehicle
 7 number 1 was traveling south on West Virginia Route 3 at
 8 approximately 60 miles per hour. You got that from Officer
 9 Peterson or Officer Harvey or do you know?
 10 A. One of the officers. I'm not sure which one it
 11 was.
 12 Q. Do you have any reason to doubt that?
 13 A. I do not.
 14 Q. Is it your understanding that this was a police
 15 pursuit?
 16 A. Yes, it was.
 17 Q. And that Mr. Means was attempting to flee from the
 18 police?
 19 A. Yes, sir.
 20 Q. Were you aware of anything about Mr. Means at that
 21 time?
 22 A. I had never -- I didn't know him, no.
 23 Q. Okay. Were you -- did you ever become aware of why
 24 he was -- why he was fleeing from the police?

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1 Q. Okay. Were you aware that Mr. Means did not have a
 2 driver's license?
 3 A. Not at that time, no, sir.
 4 Q. Are you aware that he was driving on a revoked
 5 driver's license?
 6 A. I -- I found that out later, yes, sir.
 7 Q. Were you aware that Mr. Means had previously
 8 attempted to flee from the South Charleston Police officers
 9 on another occasion a year or two ago?
 10 A. No. I had no idea.
 11 Q. Were you aware that Mr. Means was driving on a
 12 revoked license?
 13 MR. DITRAPANO: Asked and answered.
 14 THE WITNESS: No, I -- I wasn't aware at the time
 15 of the crash, no.
 16 BY MR. RUGGIER:
 17 Q. Were you aware that Mr. Means was driving without
 18 insurance?
 19 A. Afterwards, yes, sir.
 20 Q. Were you aware that Mr. Means was driving with a
 21 registration which didn't seem to match the bike?
 22 A. Yes, sir.
 23 Q. Do you have any reason to doubt that Mr. Means was
 24 fleeing Officer Peterson?

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Sheet 11 Page 38

1 A. I do not.

2 Q. Do you have any reason to doubt that Mr. Means, as
3 stated in the report, refused to stop and, while fleeing,
4 lost control while crossing a railroad tracks and crashed
5 into an embankment?

6 A. I do not.

7 Q. It states there that vehicle number 1 came to rest
8 approximately 60 feet to the south from West Virginia Route 1
9 besides the railroad tracks and the creek.

10 A. Yeah. That's where it came to rest at.

11 Q. Did you see that?

12 A. Approximately. I did see that.

13 Q. Did you see that with your eyes?

14 A. Yes.

15 Q. Do you have any understanding as to why the bike
16 ended up down there? In other words, further down the tracks
17 or do you have any idea?

18 A. Well, I mean, just by looking at the -- the scene
19 and seeing the couple gouge marks on the track that the bike
20 left the roadway and traveled down the railroad track.

21 Q. Okay. Is it your understanding that Mr. Means
22 struck something -- the gouge marks on the tracks, what did
23 they show?

24 A. Just that the vehicle had -- had hit the track.

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1 Q. It hit the track?

2 A. Yeah.

3 Q. Hit the tracks at a high rate of speed?

4 A. I -- I would assume, yes.

5 Q. Presumably. Moving on to page 6. In you notes I
6 see on the far right that he was driving on a revoked license
7 under status.

8 A. Yes.

9 Q. And is that illegal?

10 A. Is that what, sir?

11 Q. Illegal?

12 A. Yes, it is illegal.

13 Q. And you note that he was under the influence of
14 medication/alcohol/drugs? On the left-hand side there.

15 A. Oh. Yeah. Yes, sir.

16 Q. And how do you -- where did you get that
17 information?

18 A. I don't remember, sir. I think it was one of the
19 officers that had mentioned that.

20 Q. Did Mr. Means tell you anything?

21 MR. DITRAPANO: Object to the form. And he -- he
22 said Mr. Means never talked to him.

23 THE WITNESS: No.

24 BY MR. RUGGIER:

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1 Q. Did Mr. Means, by the way he looked, did it
2 indicate to you that he was on some type of medication or
3 drugs or something along those lines?

4 A. I mean I couldn't tell by just looking at him.

5 Q. Are you aware that Mr. Means is an admitted drug
6 addict?

7 MR. DITRAPANO: Object to the form.

8 THE WITNESS: Like I said, sir, I didn't know Mr.
9 Means prior to that day, so I -- I -- I couldn't answer that.

10 BY MR. RUGGIER:

11 Q. Were you aware that Mr. Means testified that he's
12 -- he's an admitted drug addict?

13 A. I'm not aware of that, no.

14 MR. DITRAPANO: Object to the form.

15 BY MR. RUGGIER:

16 Q. I know that you say alcohol use was not suspected
17 on the left-hand side there of your report.

18 A. Alcohol use was not suspected.

19 Q. Yes.

20 A. Yeah. Let me just -- let me find it again.

21 Q. It's on page 6.

22 A. Yes.

23 Q. But you do say that drug use was suspected?

24 A. Yes.

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1 Q. And where do you get that from?

2 MR. DITRAPANO: Object to the form. He just said
3 the officers told him that, Duane. And you asked the same
4 question twice in -- within the last 30 seconds. He said the
5 officers told him that.

6 BY MR. RUGGIER:

7 Q. Were do you get that from? Where do you get that
8 information from?

9 A. From the officers.

10 Q. Did you have anything yourself that showed you or
11 demonstrated to you that drug use was suspected, because this
12 is your report, right?

13 A. Right. Yeah. No, sir, I didn't. Just going on
14 what the officers told me, but I wasn't able to do any kind
15 of field sobriety or anything on Mr. Means.

16 Q. So why did you -- why did you mark that drug use
17 was suspected?

18 A. I was just going on what the -- what the officers
19 had told me.

20 Q. Did they tell you why they suspected drug use?

21 A. Not that I recall, sir. I can't remember.

22 Q. Then on page 7 you marked that it was a failure to
23 maintain control of the vehicle.

24 A. Uh-huh.

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1 Q. Did you base that on what the officer's told you?
2 A. Well, no, that was pretty obvious. He lost control
3 and he crashed.

4 Q. Lost control? You based that on looking at the
5 scene?

6 A. Yes.

7 Q. Okay. Have you seen any photos of the gouge marks?

8 A. Yes.

9 Q. How about you -- you show me if -- tell me if those
10 -- that -- the photo of those gouge marks are in this group
11 of photographs here. You can -- if you can find that photo,
12 we can make that photo an exhibit.

13 A. Okay.

14 Q. Here it is.

15 MR. DITRAPANO: What are you handing the witness?
16 I'd like to see it.

17 MR. RUGGIER: Those are some photographs, which
18 were attached to the report.

19 MR. DITRAPANO: Attached to the state police
20 report?

21 MR. RUGGIER: I think that they're attached -- they
22 may be attached to the South Charleston Police officer's
23 report. Those are the ones that have been floating around.

24 MR. DITRAPANO: Are you making the whole thing an

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1 not just based on what the officers told you?

2 A. Yes, sir.

3 Q. Okay. And -- and explain to me, then, just how --
4 how -- so he's -- he's on the straight away to your
5 understanding, right?

6 A. Uh-huh.

7 Q. Right? And he then has to kind of veer up left.

8 A. Yeah, he has -- the road -- it's a straight away,
9 then it makes a -- kind of a sharp left-hand turn across the
10 track.

11 Q. Okay.

12 A. And then another right-hand turn.

13 Q. Right.

14 A. So when he was coming down the straight stretch, he
15 couldn't make the turn.

16 Q. Yeah.

17 A. So he went straight down the track.

18 Q. Okay. And that's what the evidence seems to
19 suggest?

20 A. Yes.

21 Q. And that's not based on just what the officers told
22 you happened?

23 MR. DITRAPANO: I'm just going to object to the
24 form.

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1 exhibit or --

2 MR. RUGGIER: I'm not sure yet. I want to see what
3 he finds out.

4 THE WITNESS: These two picture here appear to be
5 the -- the gouge, the scrape marks.

6 BY MR. RUGGIER:

7 Q. All right. Let me -- can you hold them up so we
8 can see? Could you show me where the gouge mark is?

9 A. Looks like it appears to be right in this area
10 right here.

11 Q. Okay. Were the -- that is -- is that -- that's the
12 metal portion of the track?

13 A. Yes.

14 Q. Okay. And that -- is that on the area of the track
15 where -- is it the crossing part of the track?

16 A. No. That is in between where the motorcycle came
17 to rest and the -- the crossing.

18 Q. Okay. And do you have any idea why or how the
19 motorcycle got there?

20 A. I guess when he -- the way the road was designed,
21 it -- when he went to cross the railroad track, lost control,
22 and instead of making the turn on the road way, he went
23 straight down the railroad track.

24 Q. Okay. Is that what the scene looked like to you,

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1 THE WITNESS: No, sir.

2 BY MR. RUGGIER:

3 Q. Okay. So would you agree with me that the evidence
4 suggests that Mr. Means simply lost control of his bike --

5 MR. DITRAPANO: Object to the form.

6 BY MR. RUGGIER:

7 Q. -- as to why he had wrecked?

8 A. Yes, he did lose control of his vehicle.

9 Q. Yeah.

10 A. Or of the motorcycle.

11 Q. What's that? Yeah, the motorcycle.

12 A. Uh-huh.

13 Q. And that is suggested to you by the gouge marks,
14 the location of the motorcycle, and the -- I guess maybe the
15 location of Mr. Means?

16 MR. DITRAPANO: Object to the form.

17 THE WITNESS: Well, like I said, Mr. Means was
18 across the railroad track, but his motorcycle -- compared to
19 the location of his motorcycle and the gouge mark that was on
20 the track and the debris that was in between the track and
21 the motorcycle indicated that was the path of the -- of the
22 motorcycle.

23 BY MR. RUGGIER:

24 Q. Does -- does that -- does that view -- is that

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Sheet 13 Page 46

1 comport with what Officer Peterson told you happened?

2 A. Yes.

3 Q. And does that view -- does the evidence comport
4 with what Officer Harvey told you had happened?

5 A. Yes.

6 Q. Did you speak to the EMTs after the incident --
7 after the accident?

8 A. I did not, no.

9 Q. And I -- do you recall exactly who all you spoke
10 with?

11 A. Just the officers that was on the scene. That
12 included Deputy Mullins from -- from the Boone County
13 Sheriff's Department.

14 Q. Okay. Anybody else?

15 A. Not that I recall, sir. Well, the wrecker driver
16 when he showed up, but that's it.

17 Q. Okay. When you were on scene -- when you arrived
18 on scene, you beat the EMTs there, correct?

19 A. By a couple minutes, yes.

20 Q. A couple minutes. And Mr. Means was laying on the
21 -- laying on the -- on the ground?

22 A. That is correct.

23 Q. And he was handcuffed at that point?

24 A. Yes.

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1 him was too close, so he was unable to stop because he felt
2 that the cruiser would hit him?

3 MR. DITRAPANO: Object to the form. What's that
4 have to do with it?

5 THE WITNESS: I mean I don't know why he couldn't
6 stop.

7 BY MR. RUGGIER:

8 Q. Doesn't sound reasonable; does it?

9 A. It does not.

10 Q. Now, are you aware that in the -- that -- that
11 Officer Harvey said I never stomped -- I never stomped on the
12 helmet of the Plaintiff?

13 A. Am I aware of that?

14 Q. Yeah.

15 A. No.

16 Q. Are you aware that Officer Harvey said what I did
17 was I tried to step over top of his helmet and, because the
18 helmet is bigger than his head, I had to step over top, which
19 put me in a vulnerable position, so I put my foot down
20 quickly on the ground?

21 MR. DITRAPANO: Object to the form. That's nothing
22 -- he didn't say anything like that.

23 THE WITNESS: I mean that's the first time I've
24 heard of the video, the first time I've seen the video --

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1 Q. Was he -- did you tell me he was laying face up or
2 face down?

3 A. He was laying face up looking -- looking at the
4 sky.

5 Q. Okay. And then the EMTs came and they -- what --
6 put him in the -- in the ambulance?

7 A. They worked with him a couple minutes while he was
8 laying there and then, yes, they put him in the ambulance.

9 Q. Okay. Did they -- did they mobilize him before
10 putting him in the ambulance?

11 A. I -- I don't know. I couldn't answer that.

12 Q. You don't know? Do you know -- did they put
13 anything on his head that you remember?

14 A. I -- to be honest, I don't remember.

15 Q. Did they put him in the ambulance on a stretcher?

16 A. I can't remember.

17 Q. You just don't know?

18 A. No.

19 Q. I got you. So you've been a police officer for a
20 long time.

21 A. Well, in between 18, 19 years.

22 Q. Does it seem reasonable to you that Mr. Means said
23 or testified that, during the pursuit, the reason he could
24 not stop his motorcycle was because the police cruiser behind

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1 BY MR. RUGGIER:

2 Q. Sure.

3 A. -- or of any -- anything like that going on, so, I
4 mean, I wasn't aware of any of that.

5 Q. Okay. Are you familiar with stolen bicycles [sic]
6 are often painted over? Is that something --

7 MR. DITRAPANO: Object to the form.

8 BY MR. RUGGIER:

9 Q. -- that you're aware of? Is that true?

10 A. Sometimes they are, yes, sir.

11 Q. Maybe the gas tank will be painted over?

12 A. I've seen that before, yes.

13 Q. When you arrived on the scene, do you recall if any
14 of the police officer's lights were on?

15 A. Yeah, I think the lights maybe -- maybe some
16 sirens, but I'm pretty sure there was lights on.

17 Q. Do -- when you arrived on the scene do you recall
18 if any sirens were on?

19 A. I think so, yes.

20 Q. So more likely than not, lights and sirens were on?

21 A. Yeah, lights and sirens because -- because I
22 remember once we got there -- once I got there, you could

23 hear the sirens and then, once they got everything situated,
24 they went and turned them off -- turned the sirens off.

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Sheet 14 Page 50

1 Q. Did you see any --
 2 A. Because it was loud.
 3 Q. I'm sorry.
 4 A. It -- because it was loud. I mean you just
 5 couldn't --
 6 Q. Did you see any evidence at the scene that Officer
 7 Peterson's vehicle struck the Plaintiff's motorcycle?
 8 A. I did not.
 9 Q. Do you have any reason to doubt that Officer
 10 Peterson was lawfully attempting to pull over Mr. Means
 11 during the pursuit?
 12 MR. DITRAPANO: Object to the form.
 13 THE WITNESS: I do not.
 14 BY MR. RUGGIER:
 15 Q. Were you aware that Mr. Means, since this incident,
 16 has overdosed on drugs?
 17 MR. DITRAPANO: Object to the form.
 18 THE WITNESS: I'm not aware.
 19 MR. RUGGIER: I don't have any further questions.
 20 MR. DITRAPANO: I have just a couple follow-ups.
 21 RE-EXAMINATION
 22 BY MR. DITRAPANO:
 23 Q. Now, Duane was asking you some questions about how
 24 the accident occurred. I mean you didn't do an accident

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1 A. Right.
 2 Q. Okay. And you're going off what they told you?
 3 A. Yes.
 4 Q. All right. And -- and you testified under oath
 5 here at this deposition that -- that, to you, it looked like
 6 Officer Harvey had kicked the helmet of Billy Means; isn't
 7 that right?
 8 A. Yes, that's what I said.
 9 Q. Okay. And -- and if I'm telling you that the
 10 helmet was on his head, then he kicked his helmet while it
 11 was on his head, correct?
 12 A. Yes.
 13 Q. He didn't step over top of him; did he?
 14 MR. RUGGIER: Object to the form of the question.
 15 That's false.
 16 THE WITNESS: I -- I don't -- I don't know exactly
 17 what happened, but it looks like he kicked the helmet is what
 18 it looked like.
 19 MR. DITRAPANO: Okay. I don't have any further
 20 questions.
 21 RE-EXAMINATION
 22 BY MR. RUGGIER:
 23 Q. The only thing you heard Mr. Means do was -- was
 24 scream out in pain. You didn't hear him say anything to you

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1 reconstruction; did you?
 2 A. We did not.
 3 Q. Okay. So you -- you were relying on what Officer
 4 Peterson and Officer Harvey told you about the incident;
 5 isn't that right?
 6 A. Correct.
 7 Q. Okay. And -- and, you know, your conclusion that
 8 -- that there was a -- a -- a wreck that happened that did
 9 not involve Officer Peterson hitting the back tire was based
 10 upon what Officer Peterson told you?
 11 A. Yes.
 12 Q. So -- so if -- if Billy Means said that Officer
 13 Peterson hit his back tire and caused the accident, you don't
 14 have any way to dispute that other than what Officer Peterson
 15 told you?
 16 A. Well, I mean, there -- there was no evidence that
 17 indicated that. There was no damage. Well, obviously, the
 18 motorcycle was very damaged. We don't know how that got
 19 there.
 20 Q. All right. Did you inspect -- did you inspect
 21 Officer Peterson's vehicle?
 22 A. No, sir.
 23 Q. Okay. So you don't know whether Officer Peterson
 24 hit him or not; do you?

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1 at all?
 2 A. Not that --
 3 Q. You didn't hear him --
 4 A. Not that I recall.
 5 Q. You didn't hear him say any words that you recall?
 6 A. No, not that I recall.
 7 Q. Was he talking or was he just screaming in pain or
 8 do you remember?
 9 A. Well, when the EMS was there, I -- I wasn't close
 10 to him, but I assume he was talking to them.
 11 Q. Okay. Did you see him speaking with people?
 12 A. No.
 13 Q. Did he -- was he alert or was he passed out or was
 14 he -- do you remember?
 15 A. I'm pretty sure he was alert.
 16 Q. Okay. And why do you say that?
 17 A. Because he was screaming.
 18 Q. Okay. I don't think I have any other questions.
 19 MR. DITRAPANO: You have the right to read the
 20 deposition and make sure that this young lady took down
 21 everything accurately, but it's videoed, so, you know, you
 22 can waive it and you don't have to fool with it anymore.
 23 Would you want to --
 24 THE WITNESS: I don't -- I'm good.

Video Depo: Sergeant J. W. Robinson

Civil Action No. 2:20-cv-00561

Thursday, June 3, 2021

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1 MR. DITRAPANO: Okay.
2 VIDEOGRAPHER: Going off the record at 1427.
3 (WHEREUPON, two photographs were marked as
4 Exhibits No. 3 and 4, and are attached
5 hereto.)
6 (Video Deposition Concluded.)

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counsel, or financially interested in the action, or interested, directly or indirectly, in the matter in controversy.

I certify that the attached transcript meets the requirements set forth within article twenty-seven, chapter forty-seven of the West Virginia Code.

Given under my hand this 18th day of June, 2021.

My commission expires March 15, 2025.

Wendy M. Thomas
Certified Court Reporter
and Notary Public

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REPORTER'S CERTIFICATE
STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

I, Wendy M. Thomas, Notary Public within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing videotaped deposition of SERGEANT J. W. ROBINSON was duly taken by and before me, under the West Virginia Rules of Civil Procedure, at the time and place and for the purpose specified in the caption thereof; the said witness having been duly sworn by me to testify the whole truth and nothing but the truth concerning the matter in controversy.

I do certify that the said videotaped deposition was correctly taken by me by means of the Stenomask; that the same was transcribed by me or under my direct supervision, and that the said transcript is a true record of the testimony given by said witness.

I further certify that I am not connected by blood or marriage with any of the parties to this action, am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or

Wendy M. Thomas
Certified Court Reporter
304-541-0636